



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms
Washington, D.C. 20226

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DISTINGUISHING CIGARS FROM CIGARETTES

Manufacturers and Importers of Tobacco Products and others concerned:

PURPOSE: This industry circular is to remind you of your responsibilities to make proper distinctions between cigarettes and cigars for the purposes of taxpayment and labeling under 26 U.S.C. Chapter 52.

BACKGROUND: In 1973 the Bureau published ATF Ruling 73-22 and ATF Procedure 73-5 which contain definitive guidelines for distinguishing cigars from cigarettes when the product wrapper is other than natural leaf tobacco. During the two years since publication we have received no substantive comments questioning the scientific validity of the test methods as set out in ATF Procedure 73-5. Therefore, we feel the methods are generally accepted by the affected tobacco industry as a proper way to distinguish between cigars and cigarettes for tax purposes.

The Bureau's program of monitoring on-the-market products recently disclosed instances of products which were labeled as and tax determined as cigars but which did not fully meet the cigar criteria of 26 U.S.C. 5702(b), as amplified in ATF Ruling 73-22 and ATF Procedure 73-5. While these instances involved products in the small or "little" category, it is important to keep in mind that the same distinction is applicable to products of all sizes when marketed as cigars.

MANUFACTURER'S AND IMPORTER'S RESPONSIBILITIES: It is the initial responsibility of the manufacturer or importer to make the necessary determinations as stipulated in ATF Ruling 73-22 to establish the proper tax classification of tobacco products.

While it appears that manufacturers have generally been exercising reasonable care in the initial tax categorization, at least as it relates to little cigars, there is evidence

that subsequent changes have been made in the formulation of some products without adequate consideration of the possible change in taxable category of the products. It is in this area of change that we particularly caution manufacturers to exercise great care.

As explained in ATF Ruling 73-22, the Bureau will issue an advance ruling on the taxable status of any product a manufacturer or importer wishes to market as a cigar. However, it should be kept in mind that such a ruling applies only to the specific wrapper and filler formulation considered. It is the responsibility of the producer to assure the continued cigar integrity of the product by regularly monitoring the filler tobaccos and the reconstituted tobacco wrapper.

BUREAU PROCEDURE: In recognition of the difficulties experienced by some tobacco manufacturers in applying the testing methods described in ATF Procedure 73-5, the Bureau will publish an amplified procedure in a forthcoming ATF Bulletin which will explain the application of these tests and examinations in greater detail.

The Bureau will continue to test and examine samples of products, and wrapper and filler materials, obtained from both factory and market sources. In addition, advertising, point of sale merchandising materials, and purchasing patterns of consumers will be monitored to determine whether it is likely that any product classified as a cigar is being offered to or purchased by consumers as a cigarette.

INQUIRIES: Any inquiries concerning this circular or the analytical methods described in ATF Procedure 73-5 should be addressed to the Director, Bureau of Alcohol, Tobacco and Firearms, Attention: RIS, Washington, D.C. 20226.

Rex D. Davis

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Director

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